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Supreme Court of the United States

OCTOBER TERM, 1948

No. 267

WILLIAM FARRELL, PETITIONER,

vs.

UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION, LUCKENBACH STEAMSHIP COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 9, 1948.

CERTIORARI GRANTED NOVEMBER 22, 1948.

SUPREME COURT OF THE UNITED STATES

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

In Admiralty 140-183

WILLIAM FARRELL, Libelant,

against

UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION, North Atlantic and Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., Respondents

SUPPLEMENTED AND AMENDED LIBEL

To the Honorable Judges of the United States District Court for the Southern District of New York:

Seamen's Action

Libel Under Special Rule for Seamen to Sue Without Security or Prepayment of Fees for the Enforcement of the Laws of the United States, Common and Statutory for Protection of and for the Health and Safety of Seamen at Sea.

Supplemental libel of William Farrell, in accordance with the Order of Mr. Judge Albert L. Watson, U. S. D. J. for the Middle District of Pennsylvania, dated August 12, 1946, and consolidated with libel in the Southern District of New York by his order dated August 20, 1946, for trial in a cause of action, civil and maritime, against the respondents herein, under the provisions of the Suits in Admiralty Act of March 9, 1920, and pursuant to the provisions of Title 50 U. S. C. A., Section 1291, permitting the filing of a libel in personam for recovery of wages, maintenance and cure and damages for personal injuries.

The libelant, by G. Lester W. Curry, his proctor, complaining of the respondents, alleges as follows:

First: That at all times hereinafter mentioned the respondent, United States of America, was and is a corporate [fol. 6] sovereign, which has by law consented to be sued.

Second: Upon information and belief, that at all the times hereinafter mentioned, the respondent, War Shipping

Administration, was and is a governmental agency created by law and established for the purpose, among other things, of purchasing and operating vessels for and on behalf of the respondent, United States of America.

. . . . . .

[fols. 7-8] Seventh: That at the times hereinafter mentioned, the libelant was and still is a citizen and a resident of the United States, residing in the Borough of Avoca, State of Pennsylvania.

. . . . . .

[fol. 9] For a Second Cause of Action

Eighteenth: The libelant herein, repeats and realleges as a part of this cause of action, all of the allegations contained in Paragraphs numbered "First", "Second" and "Seventh" of the first cause of action, with the same force and effect as if they were herein specifically set forth.

Nineteenth: Upon information and belief, that at all times hereinafter mentioned, the respondent, Luckenbach Steamship Company, Incorporated, was and still is a Corporation duly organized and existing in accordance with law, with an office and place of business in the Borough of Manhattan, City, County and State of New York, and within the Southern District of New York.

Twentieth: Upon information and belief, that at all times hereinafter mentioned, the respondents, United States of America and the War Shipping Administration, owned, operated and controlled a certain vessel, the S/S "James E. Haviland", which is now in or about to come within the jurisdiction of the United States of America and this Honorable Court.

Twenty-first: Upon information and belief, that at all times hereinafter mentioned, the said S/S "James E. Haviland" was documented and registered in the name of the United States of America and the War Shipping Administration and was operated for and on behalf of the United States of America and the War Shipping Administration by the respondent, Luckenbach Steamship Company, Incorporated.

Twenty-second: Upon information and belief, that at all times hereinafter mentioned, the said S/S "James E.

HAVILAND" was flying the American Flag and was of American Registry and engaged as a merchant vessel.

[fol. 10] Twenty-third: Upon information and belief, that at all times hereinafter mentioned, the libelant was employed by the respondents aboard the aforesaid vessel as Oiler, and in the service of the said Vessel, having signed regular merchant shipping articles for the voyage aboard the said vessel, at Naples, Italy, in the capacity of Oiler, at a stipulated rate of wages per month and found.

Twenty-fourth: Upon information and belief, that on or about February 1, 1944, and for some time thereafter the S/S "JAMES E. HAVILAND" was lying in navigable waters at a dock at Palermo, Sicily; that said dock was worn, torn and strewn with debris and otherwise badly out of repair, and said dock was the sole means of access to and egress from the aforesaid vessel to the adjoining street.

Twenty-fourth-A: Upon information and belief, that at all times hereinafter mentioned the aforesaid dock and the Port of Palermo, Sicily, were occupied, operated and controlled by respondent, United States of America.

Twenty-fifth: Upon information and belief, that at all times herein mentioned, the aforesaid vessel was being operated under strict wartime measures, dangerously close to enemy occupied territory and within easy range of enemy aircraft and submarines.

Twenty-sixth: Upon information and belief, that the respondents herein with knowledge and notice of the aforesaid conditions and the dangerous condition of the aforesaid dock did, on or about February 5, 1944, issue to the libelant herein a pass or leave to go ashore, and did negligently, recklessly and carelessly permit and allow the libelant to be ashore.

[fol. 11] Twenty-Seventh: Upon information and belief, that on or about February 5, 1944, libelant went ashore and as he was returning to the said vessel to resume his employment aboard the S/S "James E. Haviland" and while he was on the dock to which the aforesaid vessel was tied, he was suddenly and without any fault on his part caused to fall and was precipitated down into an unprotected dry dock, which dry dock was attached to and became part of the aforesaid dock to which the aforesaid vessel was tied;

that libelant fell a great distance and landed on the solid concrete botton of the aforesaid dry dock, thereby sustaining very serious and permanent personal injuries. That prior to the occurrence of the accident the libelant had been duly admitted on the said dock and premises and had presented himself and his pass to a Military Police guarding the entrance to the said dock, and had passed through the entrance and onto the dock and that it was necessary for libelant to walk over said dock and premises in order to reach the ship and resume his employment.

Twenty-Seventh—A: Upon information and belief, that at all times herein mentioned the aforesaid dry dock was without water and was owned, operated and controlled by respondent, United States of America.

Twenty-Seventh—B: Upon information and belief, that at all times herein mentioned the aforesaid dry dock was occupied by a Naval Vessel owned, operated and controlled by respondent, United States of America.

Twenty-Eighth: That solely by reason of the respondents' said negligence, recklessness and carelessness as aforesaid, the libelant was injured, externally and internally and permanently, has suffered, is suffering and will very probably suffer great pain, agony and mental anguish for the [fol. 12] remainder of his life, has been rendered totally blind, has been and will be prevented from attending to his work for the rest of his life, has lost and will lose sums of money which he otherwise would have earned, has been obliged to undergo serious operations, has received and is still receiving medical treatment and attention, was and is compelled to pay out large sums to repatriate himself, for travel expense for himself and attendant to and from hospitals, and the libelant has been permanently injured all to his damage in the sum of One Hundred Thousand Dollars ($100,000.00).

Twenty-Ninth: That on or about the 12th day of October, 1945, the claim of the libelant was duly submitted for allowance to the Luckenbach Steamship Company, Incorporated, in accordance with the rules and regulations governing claims for death of seamen and election of remedies under Public Law 17, 78th Congress, H. R. 133, a copy of which claim is annexed hereto and made part of this libel, upon which this action is founded.

Thirtieth: That the Luckenbach Steamship Company, Incorporated, failed to notify the libelant in writing of a determination upon his claim within sixty (60) days following the date of filing thereof and as provided in the rules and regulations stated aforesaid libelant's claim is presumed to have been administratively disallowed.

Thirty-First: That all and singular the foregoing matters are true and within the Admiralty and Maritime Jurisdiction of the United States and of this Honorable Court, and that they can be compelled to answer all and singular the matters aforesaid and that this Honorable Court would be pleased to decree the payment of your libelant's claim.

[fol. 13] For a Third Cause of Action

Thirty-Second: The libelant herein, repeats and realleges as a part of this cause of action, all of the allegations contained in Paragraphs numbered "First", "Second" and "Seventh" of the First Cause of Action and Paragraphs numbered "Nineteenth", "Twentieth", "Twenty-First", "Twenty-Second", "Twenty-Third", "Twenty-Ninth" and "Thirtieth" of the Second Cause of Action, with the same force and effect as if they were herein specifically set forth.

Thirty-Third: Upon information and belief, that on or about February 5, 1944, the S/S "James E. Haviland", was lying in the navigable waters at a dock at Palermo, Sicily; that on said date libelant was given leave to go ashore; that he went ashore and as he was returning to the said vessel to resume his employment aboard the said "James E. Haviland" and while he was on the dock, to which the aforesaid vessel was tied, he was suddenly and without any fault on his part caused to fall and was precipitated down into an unprotected dry dock which dry dock was attached to and became part of the aforesaid dock to which the aforesaid vessel was tied; that libelant fell a great distance and landed on the solid concrete bottom of the aforesaid dry dock, thereby sustaining very serious and permanent personal injuries. That prior to the occurrence of the accident the libelant had been duly admitted on the said dock and premises and had presented himself and his pass to a Military Police guarding the entrance to the said dock, and had passed through the entrance and

onto the dock and that it was necessary for libelant to walk over said dock and premises in order to reach the ship and resume his employment.

Thirty-Fourth: That by reason of the said personal [fol. 14] injuries libelant has been rendered sick, sore, lame and permanently disabled, has suffered, is suffering and will very probably suffer great pain, agony and mental anguish for the remainder of his life, has been rendered totally blind, has been and will be prevented from attending to his work for the rest of his life, has lost and will lose sums of money which he otherwise would have earned, has been obliged to undergo serious operations, has received and is still receiving medical treatment and attention, was and is compelled to pay out large sums to repatriate himself, for travel expense for himself and attendant to and from hospitals, and the libelant has been permanently injured all to his damage.

Thirty-Fifth: That by reason of the aforesaid and the resulting injuries libelant, under the general maritime law, is entitled to be maintained and cured, and to his wages to the end of the voyage.

Thirty-Sixth: That the libelant has spent and will be required to spend large sums of money for his maintenance, care and cure all to his damage in the sum of Fifty Thousand Dollars ($50,000.00).

Thirty-Seventh: That all and singular the foregoing matters are true and within the Admiralty and Maritime Jurisdiction of the United States and of this Honorable Court and that respondents can be compelled to answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of your libelant's claim.

Wherefore libelant prays that the respondents, and each of them, be required to appear and answer all and singularly the matters aforesaid, and that libelant may have a decree [fol. 15-17] for the amount of wages, maintenance and bonuses found due and owing in the First Cause of Action, for the amount of the damages in the Second Cause of Action, to wit, the sum of One Hundred Thousand Dollars ($100,000.00), and for maintenance and cure in the Third

Cause of Action, to wit, the sum of Fifty Thousand Dollars ($50,000.00).

G. Lester W. Curry, Proctor for Libelant, Office and P. O. Address, 70 Pine Street, New York 5, N. Y.

(Verified by Proctor on behalf of Libelant on December 26, 1945.)

[fol. 18] In United States District Court, Southern District of New York

(Same Title)

Answer

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of the United States of America to the supplemental libel and complaint of William Farrell filed herein pursuant to an order entered on August 12, 1946, in the United States District Court for the Middle District of Pennsylvania, in a cause of action alleged to be civil and maritime, alleges that War Shipping Administration, also named as a respondent, is not properly so named and is not subject to suit, and further alleges upon information and belief as follows:

As to the First Alleged Cause of Action

First. Respondent admits that it was and is a corporate sovereign which has by law consented to be sued but only in accordance with the statutes enacted for that purpose and except as so admitted, denies the allegations contained in the first article of the libel.

Second. Respondent denies the allegations contained in the second article of the libel except that it admits that War Shipping Administration was a governmental agency created by Executive Order to perform certain functions.

* * * * * * * * *

[fol. 19-20] Seventh. Respondent alleges that it is without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in the seventh article of the libel.

. . . . . .

[fol. 21] As To the Second Alleged Cause of Action

Eighteenth. Respondent repeats the allegations hereinbefore set forth in the first, second and seventh articles as its answer to the allegations of the libel repleaded in the eighteenth article thereof.

Nineteenth. Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the nineteenth article of the libel.

Twentieth. Respondent denies the allegations contained in the twentieth article of the libel except that it admits that on the date mentioned in the twenty-seventh article of the libel respondent owned, operated and controlled the steamship James E. Haviland.

Twenty-first. Respondent denies the allegations contained in the twenty-first article of the libel except that it admits that on the date mentioned in the twenty-seventh article of the libel the steamship James E. Haviland was documented and registered in this respondent's name and was operated by it.

Twenty-second. Respondent denies the allegations contained in the twenty-second article of the libel except that it admits that on the date mentioned in the twenty-seventh article of the libel the steamship James E. Haviland wore the American flag and was of American registry.

Twenty-third. Respondent denies the allegations contained in the twenty-third article of the libel except that it admits that on the date mentioned in the twenty-seventh article of the libel libellant had been employed by it as a member of the crew of the steamship James E. Haviland [fol. 22] under shipping articles by him signed.

Twenty-fourth. Respondent denies the allegations contained in the twenty-fourth article of the libel except that it admits that on or about February 1, 1944 the steamship James E. Haviland lay at a dock at Palermo, Sicily.

Twenty-fourth (a). Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the twenty-fourth (a) article of the libel.

Twenty-fifth: Respondent admits the allegations contained in the twenty-fifth article of the libel.

Twenty-sixth. Respondent denies the allegations contained in the twenty-sixth article of the libel.

Twenty-seventh. Respondent denies the allegations contained in the twenty-seventh article of the libel.

Twenty-seventh (a). Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the twenty-seventh (a) article of the libel.

Twenty-seventh (b). Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the twenty-seventh (b) article of the libel.

Twenty-eighth. Respondent denies the allegations contained in the twenty-eighth article of the libel.

Twenty-ninth. Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the twenty-ninth article of the libel.

[fol. 23] Thirtieth. Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the thirtieth article of the libel.

Thirty-first. Respondent denies the allegations contained in the thirty-first article of the libel.

As to the Third Alleged Cause of Action

Thirty-second. Respondent repeats each and every allegation hereinbefore set forth in the first, second, seventh, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-ninth and thirtieth articles as its answer to the allega-

tions of the libel repleaded in the thirty-second article thereof.

Thirty-third. Respondent denies the allegations contained in the thirty-third article of the libel.

Thirty-fourth. Respondent denies the allegations contained in the thirty-fourth article of the libel.

Thirty-fifth. Respondent denies the allegations contained in the thirty-fifth article of the libel.

Thirty-sixth. Respondent denies the allegations contained in the thirty-sixth article of the libel.

Thirty-seventh. Respondent alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations as to the admiralty and maritime jurisdiction of this Court herein and denies the other allegations contained in the thirty-seventh article of the libel.

Thirty-eighth. Respondent alleges as a defense to the alleged second cause of action that libellant's injuries compained of, if any, were caused or contributed to by libellant's own negligence.

All and singular the premises are true.

[fols. 24-234] Wherefore, United States of America prays that the libel herein be dismissed as to it with costs.

Burlingham, Veeder, Clark & Hupper, Proctors for Respondent, United States of America.

(Verified by Chauncey I. Clark on behalf of Respondent on October 25, 1946.)

* * * * * * *

[fol. 235] In United States District Court, Southern District of New York

(Same Title)

Opinion—July 1, 1947.

Bright, D. J.

[fol. 236] Libellant, a seaman, brings this action to recover on three counts—(1) for wages, maintenance and

bonuses, (2) for personal injuries claimed to have been suffered by reason of the negligence of the respondents United States and Luckenbach Steamship Co., Inc., and (3) for maintenance and cure against the last named respondents. These claims will be considered in the order pleaded.

1

The facts proven as to this claim for wages are not in dispute. In November, 1942, libellant, then 22 years of age, enlisted in the Merchant Marine, and was sworn in as a member of the United States Navy. After a period of training and service upon another ship, on September 15, 1943, he signed on the S. S. "John Hopkins", as an oiler, for twelve months, to sail foreign, with base pay of $110. a month, plus war time bonuses. That voyage ended on March 25, 1944. The ship was a merchant vessel, owned and operated by the United States. When it arrived at Naples, Italy, libellant, on November 13, 1943, was granted a pass by the master to go ashore for medical treatment. He did so, and after examination and treatment by a doctor, returned to the ship on the same day. His ailment grew worse, and he applied on two subsequent days for a pass and was refused by a master. The master at the time had secret orders to sail, and felt that the difficulty from which libellant was suffering was not serious enough to delay sailing, and told libellant that he would soon be in another port at which time he could get treatment. Libellant, who was suffering from his ailment, was not satisfied with this, [fol. 237] and, contrary to the master's statement that no one was allowed ashore and that if he went ashore the responsibility would be his own, asked the pilot to take him ashore which was done. He saw a doctor and was sent to the hospital on November 16, 1943, where he remained until November 26, 1943. The vessel was ordered to sea on November 17, 1943, and as Farrell was absent without leave, he was logged as a deserter. The charge of desertion was subsequently withdrawn.

After discharge from the hospital, libellant was sent to the replacement pool for seamen in Naples, and was later assigned to the S. S. "James E. Haviland", another vessel owned and operated by the United States. He went aboard that vessel on December 15, and signed on on December 16,

1943, as an oiler, with the same pay and bonuses as on the "Hopkins".

At the time he left the "Hopkins" he had due him		$777.05
Against this were charges for advances, tax deductions, etc. of		407.07
Leaving a balance of		369.98
This money was brought back to this country and deposited with the clerk of this court. The vessel received a bill for board while Farrell was in Naples in the sum of	$36.00	
The charge in connection with the deposit of the money was	1.15	
In January 1945, Farrell was paid	250.00	
		287.15
And there is still held on the contingency that other bills might come forward		$ 82.83

No bills have been presented and the United States admits that libellant is entitled to this amount if his suit was timely brought.

[fol. 238] The Suits in Admiralty Act, under which this action is brought (46 U. S. C. A., section 745), provides that such an action must be brought "within two years after the cause of action arises". The libel here was filed on December 26, 1945. Libellant obviously terminated his employment on the "Hopkins" when he signed on the "Haviland" on December 16, 1945. If that was when his cause of action arose, his action was instituted ten days too late.

Public Law 17 of the 78th Congress (Title 50 U. S. C. A., section 1291(a)), provides that any claim for wages shall, if administratively disallowed in whole or in part, be enforced pursuant to the Provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel; and the words "administratively disallowed" are defined as a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration. Libellant filed his claim on October 12, 1945. Under

General Order 32 of the War Shipping Administration, rules and regulations were promulgated which, so far as material, provided (304.23) that no action should be commenced unless such claim was filed and administratively disallowed; and (302.26) if the person or agency with whom the claim is filed failed to notify claimant in writing of a determination upon such claim within sixty days following the date of filing, the claim shall be presumed to have been administratively disallowed. There is no proof that the claim was disallowed other than by the lapse of time.

I think that by these regulations promulgated and enforced by an agent of the United States authorized by the [fol. 239] statute mentioned so to do, the two year statute of limitations in the Suits in Admiralty Act was tolled for the sixty days and that libellant's suit upon this claim was timely.

He is entitled, therefore, to recover from the respondent United States, the balance above mentioned, which is the amount due only to November 16, 1943, when libellant went ashore	$ 82.83
And in view of the fact that the charge of desertion has been withdrawn and he was in Naples without work and not repatriated until December 16, 1943, he would be entitled to one month's further pay of	110.00
And maintenance at $3.50 per day from November 26 to December 15	70.00
A total of	$262.83

This claim has been withdrawn by libellant as against the respondent North Atlantic & Gulf Steamship Company, and the libel as to it is dismissed.

2

This claim is to recover damages for personal injuries while libellant was a seaman on the S. S. "James E. Haviland", a cargo and troop ship. As stated above, he signed on that vessel at Naples on December 16, 1943. It arrived at Palermo on February 4, 1944. On February 5, 1944, libellant and others of the crew were given shore leave passes and they left the vessel some time after five o'clock in the evening while it was still daylight. They walked through

gate No. 5 near the dock, to which the vessel was moored, toward the main part of the town, which, as well as the dock area, had been badly bombed.

At that time, the entire harbor was in possession of the [fol. 240] United States Navy, and had been enclosed by walls and barbed wire, and each gate leading into the area was guarded by military police. The harbor was shaped somewhat like the letter C, and the pier at which the "Haviland" was moored, was about in the middle of the C. At the north end of the harbor, there was a dry dock built into the land. The area where it was located was also enclosed by a wall and wire fence. One of the witnesses stated that across the water the dry dock was about ¼ mile from where the "Haviland" was moored, and to get to it by land was about a mile. Maps introduced in evidence show that it was a considerable distance away from the pier and the only access to it was by the streets of Palermo in that vicinity. There was no path or street from the pier to the dry dock along the shore front. It was testified that this area was filled with debris from the bombing which the shore front had had and that no one could walk along this particular part of the shore front except by climbing over that debris.

Later in the evening, Farrell met one of the crew, and together they started for their vessel about eight o'clock from downtown Palermo. It was dark and raining. They inquired of an Italian policeman the way to gate 5, out of which they had come, but were wrongly directed and took the wrong route. They finally arrived at gate No. 1, which was one of the entrances to the area where the dry dock was located. They showed their shore leave passes, which revealed that they were seamen from the "Haviland", to the sentry and were admitted. After getting inside the gate, they started for what they thought was their ship, one walking on one side of the road and Farrell on the other, hoping that by that means they might get a ride back. The [fol. 241] other seaman and libellant were about 40 or 50 feet apart. The seaman, who was the only eye witness to the accident, testified he could see Farrell's figure but not clearly. He saw Farrell go over the rail on the other side of which was the dry dock. This seaman went over and held on to the rail, but saw no water, and when he saw what had happened, gave the alarm to the sentry. Farrell was

found at the bottom of the dry dock and was taken to the hospital by ambulance, where it was discovered that he had sustained a deep lacerated scalp wound and a severe fracture of the skull of such a nature that has caused double blindness, the optic nerve in both eyes being atrophied. He will be permanently blind. In addition to that, since his return to this country, he had four of five convulsions which, the testimony shows, comes from traumatic epilepsy, which will also be permanent and is a result of the skull fracture.

Libellant claims that the respondents United States and Luckenbach Steamship Company are liable, (1) because there was negligence on the part of the master of the "Haviland" in granting shore leave to libellant, an inexperienced seaman who had never been in the port of Palermo before, and because it was a dangerous port by reason of the bombings which it had sustained; (2) because they were negligent in permitting libellant to enter the dry dock area under the circumstances; and (3) because they were negligent in the maintenance of the dry dock, which was then being used by the United States Navy for the repair of its vessels, in that the same was not adequately lighted and was not protected by a proper fence or barricade.

[fol. 242] Except with reference to the question of lights and barricade in the dry dock area, there is no substantial contradiction in the testimony. The undisputed proof shows that libellant was lost through no fault of the respondenst, but wandered with his companion into the dry dock area where he had no right to be, more than half a mile from where his ship was docked and where the respondents could not be charged with any duty to protect him, not knowing or having reason to believe that he would be there on his return to the ship. He did not go back the way he left the ship and as his return was by a road over which the respondents could not be charged with notice that he would travel, they owed him no duty of reasonable care. *Hover* v. *Central R. Co. of N. J.*, 255 Fed. 493; *Krysiak* v. *Pennsylvania R. Co.*, 270 Fed. 758; *Sassaman* v. *Pennsylvania R. Co.*, 144 F(2) 950, 952.

I can see no merit in the claim that the master was negligent in granting a shore leave pass to the libellant under the circumstances. The work on the ship apparently was over for the day. It had docked safely the day before

and undoubtedly the crew were anxious to go ashore. They left the ship in broad daylight. There is evidence that the curfew imposed by the military authorities required their return by six o'clock. If there was such a regulation, that was violated. Certainly the master could not be said to have failed to exercise due care for the safety of libellant merely because he permitted him to go ashore. He certainly had the right to assume that libellant was competent and able to look out for himself, and would remain so while on shore, and the mere fact that he was given his liberty to do so, does not bespeak negligence.

[fol. 243] Libellant did not become lost through any fault of the master, nor could he be charged with notice that he might go astray. There was no duty on the part of the respondents to guard libellant, while engaged in purposes of his own, from dangers, if any, which could not reasonably be anticipated; certainly not from the danger of falling into this dry dock where he had no right to be, nor where it was reasonable to believe he ever would be. Shore leave is an essential part of the contract and life of a seaman as such. *Aguilar* v. *Standard Oil Co.*, 318 U. S. 724, 734.

Anderson v. *Lorentzen*, 160 F(2) 173; *Nowery* v. *Smith*, 69 F. Supply. 755; *Kyriakos* v. *Goulandris*, 151 Fed. 132; *Aguilar* v. *Standard Oil Co.*, 318 U. S. 724; *Matter of Manville* v. *N. Y. State Dept. of Labor*, 294 N. Y. 1; *Marceau* v. *Great Lakes Transit Corp.*, 146 F(2) 416, cert. denied 324 U. S. 872; *Cudahy* v. *Parramore*, 263 U. S. 418; *Bountiful Brick Co.* v. *Giles*, 276 U. S. 154; *Young* v. *N. H. & H. R. Co.*, 79 F.(2d) 844; *Matter of McInerney* v. *B. & S. R. R. Corp.*, 225 N. Y. 130; and *Heater* v. *Erie R. R. Co.*, 210 N. Y. App. Div. 497, are not in my judgment controlling. Those cases were concerned with ways customarly used by employees in going to or leaving their place of work, or ways which they were impliedly or expressly invited to use. In the Kyriakos case the master was charged with knowledge of the quarrelsome propensity of a seaman.

Nor can I see any negligence on the part of the sentry at gate 1. Libellant and his companion came to it and displayed their shore leave pass which had been issued to them by the military authorities. Even though the pass showed that they were seamen from the "Haviland", the sentry in admitting them would not be chargeable [fol. 244] under the facts here shown with any want of

reasonable care. I cannot and do not find that it was negligence so to do. But, assuming libellant was properly in the dry dock area and was entitled to the exercise of reasonable care, the evidence upon the subject of lights and barricades seems overwhelmingly against libellant's contention otherwise. Libellant, because of his injuries, has sustained a complete loss of memory of all of the events occurring to him for some time before the accident and for many weeks thereafter. His witness Furey, was a seaman from the U.S.S.S. "Plunkett," which had been seriously damaged by a direct bomb hit and had been in dry dock at some time preceding the accident. It had left the dry dock, however, on January 31, five days before the accident. He testified that there were stanchions or posts around the dock with pieces of chain running between them; and that in places one or two of the pipe stanchions were missing but in other places they had a chain running through them. He did not recall seeing any big flood lights around the dock. Repairs were being made on the deck, and work was going on the night which required lights in the area where the ship was being repaired. There were other occassional lights around. At night electric lights were lighted at each end of the gangway from the ship to the shore. When he returned to the ship at night, after shore leave, he had no trouble seeing the gangway.

Another witness called by libellant stated that after he heard of the accident to the libellant, he went to the dry dock, but the sentry would not admit him through the gate; that he got within 150 or 200 feet of the dry dock and did not see any fence around it, but saw people working [fol. 245] around it. The testimony of libellant's companion at the time of the accident has been referred to. While he testified that it was so dark he could scarcely distinguish libellant's shape 40 or 50 feet away, he saw Farrell go over the rail and when he went over to see what had become of him, he found a rail about belt high five feet from the roadway, and took hold of it. When he went back to the dock later, he saw a rail around the dock on one side but did not go around, so he could not describe whether it was all the way around. He says there were no lights in the town or on the dock.

Respondents called Tarallo, who was in the United States Army and stationed at the dry dock in question and in

charge of it. He was not at the dry dock when the accident happened, but was there shortly before and returned later in the evening. He testified that the stanchions around the dock itself were removable, so that they could be taken out when a ship was being put into dock, and were replaced when the ship was in position. The fence or barricade consisted of these removable stanchions which were sunk into holes in the dock between which was run a wire cable or chain 5/8 of an inch in diameter, and which extended all the way around the dock area except at the two ends. He also testified that lights were on some of the buildings around the area of the dry dock and there were other lights on the side of the dry dock. There were also lights on the top of the rigging loft, a building at one end of the area, and on the ends of the booms on the three cranes used in the repair work which went on with three shifts all of the 24 hours of the day. There were also lights on the pump house at the land end of the dock. [fol. 246] He stated further that on the night of February 5, 1944, when he made his inspection just before leaving between 5 and 6 o'clock, the stanchions were up and the flood lights were lighted around the dock area. At that time work was being done in salvaging parts from a subchaser, which was in the dry dock and the lights were required so that the work could be done, and they were flood lights around the edge of the dock directed toward the work. He was told when he returned that the accident had occurred and went over to the dock, and as far as he could see the life line was up and the flood lights burning.

Claffey, the senior patrol officer of the Navy in that area at the time of the accident, was also called and testified that he was responsible for the general security of the Allied forces in that vicinity. While the city was blacked out at the time, the dry dock area was kept lighted because work was going on 24 hours a day. During the months of January and February 1944, he saw the lights practically every night; the light was adequate and the reflection could be seen five miles away. He was not in the dock area on February 5th.

Nelson, another witness for respondents, was chief Quarter Master in the Armed Forces at Palermo at the time, and for some time before and after. He described the roads which would be taken from the town to the pier where the "Haviland" was docked, and to the dry dock.

There were no streets or roadways extending from one to the other and no regular means of communication between them along the shore front. The naval base area of the dry dock did not include the part where the "Haviland" [fol. 247] was tied up, although they were both within one enclosure.

At the time of the accident, the S. S. "Prevail" was in the dry dock undergoing repairs, as was also the sub-chaser for salvage purposes. Moore, who was deck officer on the "Prevail", was called as a witness and stated that he kept a log of the ship. He was in charge of the ship from February 5th at noon to noon of February 6th. The gangway from the ship to the shore had railings on both sides and from the shore end rope rigging ran to the stanchions on the dock and there were two lights on either end. There was a rail around the dry dock consisting of steel posts and two chains from post to post, about 3½ feet high, and this was all around the edge of the dock except at the water edge. He went around the edge of the dry dock and made an inspection about 7 o'clock or 7:45 in the evening. After dark they had four or six 200 watt lights down in the dock trained against the hull of the ship. The lights on shore surrounding the dock, although on a dim-out basis, were sufficient so one could see, and were turned on at sundown and burned all night. The work on the "Prevail" was going on all day and night. Right ahead of the "Prevail" in the dry dock was the sub-chaser and men were continuously working on that salvaging parts from it. They had lights erected all along the edge of the dock so that they could see to work and they were left on. He did not recall whether he saw them on the night of the 5th.

Captain Ragsdale, called as a witness for the respondent, testified that the shipyard and the dry dock was under his [fol. 248] immediate control. Palermo was captured by the Allied forces in July 1943, and work to get the dry dock in condition so that it could be used was immediately started. An area of 50 feet wide on either side of the dock was cleared off, a bomb crater at the head of the dock was filled in and repaired, batteries of lights were mounted on top of the buildings so that work on three shifts could be carried on. A string of lights was erected along the edge of the dock and lights were placed on each of the two traveling cranes and on the buildings at the intersection

of the streets in the latter part of August or the middle of September 1943. He submitted a diagram, Exhibit M, showing where the lights were located. One or two other lights were located on the water tower mentioned. The dock went into operation on December 1, 1943, and was used continuously twenty-four hours a day from then on until 1945. The "Prevail" was in the dock from February 2nd to February 8th, 1944, and the "Plunkett" from January 27th to January 31st, 1944. Around the dock there was a railing about 36 inches in height. It was put up immediately after a ship is docked and before the water is drawn from the dock. There are turnbuckles which permit the line from stanchion to stanchion to be tightened; that line is extended completely around the dock, and was supported by the steel pipe stanchions mentioned. That rail was erected and in use by November 27, 1943, and was in place and being used on February 5, 1944. On that date the "Prevail" was in about the center of the dock and in the forward end was the sub-chaser. The salvage work on this last mentioned vessel was prosecuted in three shifts because of the need for parts in other ships. At night there was a string of lights completely around the forward [fol. 249] end of the dock and at the lip of the dock; and in addition there were lights on the floor of the dock. They were in use on the evening of February 5th, although he could not say that he was in the dry dock area that night.

In view of the fact that the dry dock was desperately needed by the Navy for the repair of ships damaged in the invasion of Italy, and the parts taken from the sub-chaser were also in great demand so that other vessels of a similar character could be kept in commission, I can readily see that the use of the dock was continuous from the time it was placed in commission until long after this accident happened, and as the work was done on three shifts, lights were required at all times of darkness.

The preponderance of proof upon the subject of lights and barricade is clearly with the respondents, and libellant has, in my judgment, wholly failed to sustain his burden in that respect.

It was suggested by libellant's counsel that even though there was a rail at the time of the accident, as testified to by the sole eye witness Szalaj, that Farrell might have slipped on the stone platform of the dock and fallen under

the rail. The testimony of the eye witness, however, is that he saw him go over the rail.

I have not discussed the claim of the respondents, that in any event the accident having happened on the land there is not shown any maritime tort of which this court would have jurisdiction. I have some doubt on the subject and for that reason, I have discussed the claims of negli- [fol. 250] gence in full and found them not sustained.

The remaining question is whether libellant is entitled to maintenance and cure. The facts upon the subject of this claim are also not disputed. At the time of his accident on February 5, 1944, libellant sustained a large laceration completely through the scalp in the parietal region. X-rays taken on February 7th revealed a V shape fracture beneath the scalp laceration, and there was a spreading of the left parieto-occipital suture and a line of fracture in the temporal region; in other words, multiple and compound fractures of the skull. He was in various Government hospitals from the time of his accident until June 30, 1944, when he was discharged at Norfolk, Virginia, in the custody of his father, as completely disabled. The report of the senior surgeon to the Division of Maritime Insurance and War Shipping was that libellant is totaly blind as a result of the fracture which has caused a bilateral optic atrophy. He now suffers from complete loss of vision, severe pains in his head, and has lost some of his sense of smell and taste. He has a scar on the left temporal parietal region, a slight depression in the right parietal region. He suffered convulsions on February 15, 1945, February 10, 1946, October 12, 1946, and March 18, 1947, which the testimony relates to the severe injury to libellant's brain and which were the result of a post traumatic epilepsy. He will continue to have these spells and to have pain in the area of the fracture. He will need treatment and medical care from time to time and probably some care for the rest of his life. He [fol. 251] was always a healthy individual before his accident and never showed any signs of epilepsy before then. The medical testimony also shows that his condition of blindness is permanent, that in all likelihood his convulsive attacks will continue, and possibly become more frequent, and without any possibility of a further cure. The attacks and headaches mentioned will require some care from time to time whenever they persist.

The point is made that maintenance and cure, being an obligation arising because of the maritime nature of the contract between a seaman and his ship, cannot be awarded for injuries occurring on land. I cannot sustain that contention. *O'Donell* v. *Great Lakes Co.*, 318 U. S. 36, 41, 42. The right of a seaman to this relief is not dependent upon proof of negligence, and negligence or acts, short of culpable misconduct on the seaman's part, will not relieve the shipowner of responsibility. The seaman is protected in his right when on shore leave and while traversing an area between his ship and the public streets by an appropriate route. *Aguilar* v. *Standard Oil Co.*, 318 U. S. 724, 730, 735, 736.

The extent of that relief was ruled upon by the Supreme Court in *Calmar S. S. Corp.* v. *Taylor*, 303 U. S. 525, where it was written that whether the duty of maintenance and cure extended beyond the duration of a voyage was an open question, so far as that court was concerned. In that case, a seaman was suffering from a chronic disease, which, because of an accident, resulted in a serious disabling condition. The testimony was that medical treatment and amputation of the afflicted parts might halt the advance of [fol. 252] the disease, but its manifestations were likely to occur in other parts of the body; and medical opinion was that the disease tended to be progressive and might ultimately cause death. Care and treatment at frequent intervals with periodic medical observations of the patient would be of aid in resisting its progress. It was decided, (1) that the policy underlying the doctrine of maintenance and cure called for some extension of the duty beyond the term of service; (2) that it did not impose on the shipowner an indefinite obligation to furnish medical aid, nor did the court find any basis for saying that if the disease proved incurable the duty extended beyond a fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably might be expected to result from nursing, care and medical treatment; (3) "Beyond this we think there is no duty, at least where the illness is not caused by the seaman's service"; and (4) an award of a lump sum in anticipation of the continuing need of maintenance and cure for life, or for an indefinite period, cannot be made. This was reiterated in *Lindgren* v. *Shepard S.S. Co.*, 2nd Cir. 108 F.(2) 806. There a seaman was injured

by a fall. At the time he signed on he was suffering from tertiary syphilis, and at the time of the trial had general paresis, resulting from the disease mentioned, and was cured so far as cure was possible, but would never again be able to do the work of a seaman. He could do light work, and as a hospital outpatient, he should return for occasional examinations and treatment, but such treatment was to prevent relapses, not to prevent further cure which was impossible. Commenting on the statement of the Supreme Court quoted above from the Calmar case, Judge Swan [fol. 253] wrote that the facts in the two cases appeared similar, "But however this may be, and even if the Calmar case can be differentiated from the case at bar, we are convinced that a shipowner's duty to provide maintenance and cure ends when the seaman has attained the maximum cure possible."

The same rule has been applied in the case of an injury while in the service of the ship. *Luksich* v. *Misetich*, 9th Cir., 140 F. (2) 812, 814. *Reed* v. *Canfield*, Fed. Cas. 11,641; *The Bouker, No. 2*, 241 Fed. 831, cert. denied 245 U. S. 647.

Libellant here signed on the "Haviland" on December 16, 1943, was injured on February 5, 1944, and was hospitalized until June 30, 1944. The articles which he signed were for twelve months but the voyage actually ended on March 28, 1944, before he was discharged from the hospital at Norfolk. Under this count he makes claim as follows:

1. For wages for the balance of twelve months at $110 a month	$1,136.66
2. For bonuses from February 5, 1944, the date of the injury to April 8, 1944, when he left the Mediterranean bonus area for Norfolk, 64 days at $5 per day	320.00
3. For 100% bonus from February 5, 1944, to April 19, 1944, when he reached Norfolk, 2½ months at $110 a month	275.00
4. Repatriation expense withheld from prior earnings	191.25
Total wages and bonuses	$1,922.91

[fol. 254] Total wages and bonuses	$1,922.91
5. For maintenance and cure from June 30, 1944, when he was discharged from the Norfolk hospital, to June 10, 1947, the date of the trial, 1075 days at $3.50 a day	3,762.50
6. Bills paid to Dr. Druffner	50.00
7. Medicines, three prescriptions at $6 per month, to date of trial	216.00
8. Feed and maintenance of seeing eye dog, $15 a month, to date of trial	540.00
Total wages and bonuses and maintenance and cure	$6,491.41

I think it well settled that wages can only be allowed to the end of the voyage. Bonuses are not to be paid to a seaman who has left his ship and is on land because of illness. See Regulations & Decisions of the Maritime War Emergency Board, January 28, 1943, Code of Federal Regulations Suppl. 1943, pages 2136, 2138. I very much doubt if anything can be allowed for maintenance of the seeing eye dog. Such a charge is not within the traditional charge for maintenance and cure; it is neither maintenance nor cure. While treatment without expense was aways open to libellant at Marine Hospitals since his discharge from the Norfolk Marine Hospital, I think because of the immediate necessity for such treatment and the distance libellant would have to travel to a marine hospital, an allowance of the doctor's bill would be proper, as well as for the medicine, although there is very little proof that libellant has been required to expend $6 monthly for the same; but I can readily understand that in view of the serious nature of his injuries, and the sudden and acute consequences following upon the same, such an expenditure might well have been [fol. 255] made. But this charge and maintenance and cure cannot be allowed for life. Whether an allowance in the future is proper is most problematical under the cases cited, and the Calmar case prohibits a lump sum award. From the testimony upon the trial, it seems certain that libellant has received such maintenance and care as under the circumstances may be said to have resulted in as much cure as medical and surgical care can accomplish.

The award which will be made under this count, therefore, is as follows:

Wages from February 5, 1944, to the end of the voyage, March 28, 1944, at $110 a month	$190.67
100% bonus while on the ship from Palermo to Norfolk, 9 days	40.33
	$231.00
Less withholding tax and Federal Old Age Benefit Tax	30.31
	$200.69
Wages withheld	191.25
Dr. Druffner	50.00
Medicines	216.00
Maintenance for six months after leaving the hospital at Norfolk	640.00
Total	$1,297.94

Findings in accordance with the foregoing may be prepared by the attorney for the respondent and a copy served upon libellant's counsel within ten days. Libellant's counsel may have five days in which to object to any part thereof. The final findings and conclusions will be prepared by the court and filed.

John Bright, United States District Judge.

July 1, 1947.

[fol. 256] In United States District Court, Southern District of New York

Ad. 140-183

(Same title)

Findings of Fact and Conclusions of Law—Filed August 11, 1947

This action having been duly tried in admiralty, and the allegations, proofs and arguments of the respective parties

having been duly heard, the Court does hereby find and decide as follows:

FINDINGS OF FACT AS TO FIRST CLAIM

1. On October 15, 1942, libellant, then 22 years of age and having no prior sea experience, enlisted in the Merchant Marine and was sworn in as a member of the United States Navy. After a period of training at the United States Merchant Seaman's Training School on Hoffman Island, New York, and 17 days' service upon another ship, on September 15, 1943, he signed articles, as an oiler, on the S. S. John Hopkins for twelve months, to sail foreign, with base pay of $110 a month, plus wartime bonuses. That voyage ended on March 25, 1944. The ship was a merchant vessel, owned and operated by the United States. When it arrived at Naples, Italy, libellant, on November 13, 1943, was granted a pass by the Master to go ashore for medical treatment. He did so and, after examination and treatment at a United States Aid Station in the Port Area of Naples with instructions to return if his condition grew worse, returned to his ship the same day.

2. Libellant, his ailment having gotten worse, applied on subsequent days for a pass to go ashore and was refused [fol. 257] by the master for the reason that he had received secret sailing orders and believed that libellant's ailment was not sufficiently serious to delay sailing and libellant was informed that he could receive medical treatment at the next port of call within a short time.

3. Libellant on November 16, 1943, went ashore without the master's permission and contrary to his orders of November 15, 1943, and was admitted to a hospital at Naples where he remained from November 16, 1943, to November 26, 1943.

4. On November 17, 1943 the steamship Johns Hopkins sailed from Naples pursuant to orders and libellant being absent from the vessel without leave, was logged as a deserter.

5. The charge of desertion has been withdrawn.

6. Upon discharge from the hospital at Naples, libellant was sent to the Replacement Pool for Seamen at Naples where he remained without pay until December 15, 1943 at which time he was assigned to and went aboard the steamship James E. Haviland, a vessel owned and operated by respondent, United States of America.

7. On December 16, 1943 libellant signed articles for a voyage on said James E. Haviland, not to exceed twelve months, as oiler and at the same pay and bonuses as he received on the Johns Hopkins.

8. At the time libellant left the Johns Hopkins on November 15, 1943, there was due him as wages the sum of $777.05 against which were charges for advances, tax deductions, etc. amounting to $407.07, leaving a balance due libellant of $369.98, which sum was deposited with the Clerk of the United States District Court for the Southern District of New York.

[fol. 258] 9. Against said sum of $369.98 on deposit with the Clerk of the Court, there was a charge in connection with said deposit in the sum of $1.15 together with charges for libellant's bill for board in Naples in the sum of $36.00.

10. In January 1945, libellant was paid out of said sum on deposit the sum of $250., leaving a balance due for libellant of $82.83 which was withheld on the contingency that other bills might come forward.

11. No such bills have been presented to date.

12. The voyage of the steamship Johns Hopkins ended on March 25, 1944.

13. Libellant filed his claim concerning the matters which are subject of the first cause of action alleged in the libel pursuant to Public Law No. 17 of the 78th Congress (50 U. S. C. A., section 1291(a)) on October 12, 1945, and said claim was not disallowed other than by lapse of time.

14. The libel herein was filed on December 26, 1945.

15. Libellant has withdrawn his claim against respondent, North Atlantic & Gulf Steamship Company, Inc.

Conclusions of Law As to First Claim

First. The libel herein as against respondent, North Atlantic & Gulf Steamship Company, Inc., having been withdrawn, the libel as to said respondent is hereby dismissed without costs.

Second. The regulations promulgated and enforced by War Shipping Administration under Public Law 17 of the 78th Congress (50 U. S. C. A., section 1291(a)) tolled for a period of sixty days, the two year period of limitation pro-

[fol. 259] vided in the Suits in Admiralty Act, and as respects the first claim alleged in the libel, libellant's suit was timely.

Third. In view of the withdrawal of the charge of desertion and the fact that libellant was not repatriated until December 16, 1943, he is entitled to one month's further pay of $110; and the further sum of $70. for maintenance at $3.50 per day from November 26 to December 15, 1943.

Fourth. Libellant is entitled to the further sum of $82.83, the balance of earned wages unpaid.

Fifth. That libellant is not entitled to applicable bonuses for the period of hospitalization and while in the United States Replacement Pool at Naples, Italy, for the period from November 16 to December 16, 1943.

Sixth. Libellant is entitled to a decree against respondent United States of America upon the first cause of action alleged in the libel in the sum of $262.83.

FINDINGS OF FACT AS TO SECOND CLAIM

1. On December 16, 1943, at Naples, Italy, libellant signed articles for a voyage not to exceed twelve months on the steamship James E. Haviland, a vessel owned and operated by respondent, United States of America, as an oiler at a base pay of $110. per month plus wartime bonuses.

2. Said voyage actually ended on March 28, 1944.

3. On February 4, 1944, the James E. Haviland docked at Palermo, Italy.

4. On February 5, 1944, the entire harbor of Palermo was in control and possession of the United States Navy and was enclosed by walls and barbed wire and each gate [fol. 260] leading into *into* the area was guarded by military police.

5. Palermo harbor is shaped like the letter "C" and the Haviland was moored about the middle of the "C."

6. At the north end of Palermo Harbor which was enclosed by a wall and wire fence, there was a Navy dry dock built into the land.

7. Said dry dock was about one-quarter of a mile across the water from the dock where the Haviland lay moored and over a mile away by Palermo's public streets from the Haviland's dock.

8. The way of access to the dock where the Haviland lay moored was provided by Gate 5 adjacent to said dock.

9. The only access to Gate 1 of said Navy dry dock was by the streets of Palermo in that vicinity leading thereto.

10. There was no street or path along the shore front leading from the dock where the Haviland lay moored to said Navy dry dock and the area between was filled with debris from bombing, and no one could walk along this part of the shore front except by climbing over this debris.

11. On February 5, 1944 libellant and other members of the Haviland's crew left the vessel on shore leave passes sometime after 5 P. M., while it was still broad daylight.

12. Pursuant to curfew regulations imposed by Military authorities, libellant's shore leave pass required his return to the ship by 6:00 P. M. of the same day.

13. In issuing libellant a shore leave pass, the master of the Haviland had the right to assume that libellant was competent and able to look out for himself and would so remain while on shore.

[fol. 261] 14. At the time libellant was on shore he was engaged in purposes of his own.

15. On leaving the vessel, libellant walked through Gate 5 near the dock at which the Haviland lay moored and proceeded to the main part of the town of Palermo.

16. About 8 P. M. on February 5, 1944, at which time the weather was dark and rainy, libellant, accompanied by another seaman of the Haviland, Szalaj, started from downtown Palermo to return to the Haviland.

17. Libellant and Szalaj lost their way to Gate 5 and finally arrived at Gate 1, which was one of the entrances to the area where said Navy dry dock was located, and on exhibiting to a sentry guard at Gate 1 their shore leave passes showing that they were seamen from the Haviland they were admitted through said gate.

18. A few minutes later Szalaj, who could see libellant's figure, observed libellant go over a rail on the other side of which was the dry dock.

19. Szalaj went to the spot where libellant went over the rail and looking down saw no water in the dry dock and when he saw that libellant had fallen therein, he gave the alarm to the sentry.

20. Libellant was found at the bottom of said dry dock and was taken by ambulance to the Naval Hospital in Palermo.

21. At the time of the accident libellant was over a mile by public streets from where the Haviland lay moored and was at a place where he had no right to be.

22. At the time of libellant's accident the Navy dry dock

[fol. 262] and the area surrounding it were in possession and control of the Naval Forces.

23. Palermo was captured by the Allied Forces in July 1943 and work was immediately begun thereafter to put the dry dock in condition for operation.

24. An area fifty feet wide on either side of the dry dock was cleared and a bomb crater at the head of the dock was filled in and repaired.

25. Batteries of lights were mounted on the tops of nearby buildings so that work in three shifts could be carried on, a string of lights was erected along the edge of the dry dock, lights were placed on each of the two traveling cranes at the dry dock and also on buildings at the intersection of the streets in the vicinity in the latter part of August or middle of September 1943.

26. One or two other lights were placed on a water tower and on a pump house at the land end of the dry dock.

27. On the evening of February 5, 1944, and at the time of libellant's accident, flood lights illuminated the dock area as well as lights on the floor of the dock were lighted so as to enable repair work to continue on the Destroyer Prevail and salvage work on a subchaser.

28. There were also lights on a gangway leading from the Prevail to the shore.

29. The Navy dry dock went into operation on December 1, 1943 and thereafter was operated twenty-four hours a day until 1945.

30. Around said dry dock there was a chain railing about 36 inches in height which was erected and in use by No-[fol. 263]vember 27, 1943.

31. This chain railing about the dry dock was supported by steel posts placed along the sides of the dock at regular intervals and a chain running from post to post was equipped with turnbuckles which permitted the chains to be tightened.

32. This railing completely surrounded the dry dock and was in place and being used at the time of the libellant's accident on February 5, 1944.

33. The Destroyer Plunkett was in this dry dock from January 27, 1944 to January 31, 1944 and the Destroyer Prevail was in the dry dock from February 2, 1944 to February 8, 1944.

34. At the time of the accident on February 5, 1944, libellant sustained a large laceration completely through the

scalp in the parietal region, a "V" shaped fracture beneath the scalp laceration and a spreading of the left parieto-occipital suture and a line of fracture in the temporal region.

35. Libellant is now totally blind as a result of the fracture which caused a bilateral optic atrophy and he suffers severe pains in his head and has lost some sense of smell and taste.

36. Since the accident and as a result of the injury to his brain, libellant suffered convulsions on February 15, 1945, February 10, 1946, October 12, 1946 and March 18, 1947, said convulsions being the result of a post-traumatic epilepsy.

Conclusions of Law As to Second Claim

First. The master of the Haviland cannot be said to have failed to exercise due care for libellant's safety merely [fol. 264] because he permitted him to go ashore, the right of shore leave being an essential part of the contract and life of a seaman.

Second. The master of the Haviland was not negligent in granting libellant shore leave at Palermo on February 5, 1944.

Third. Libellant lost his way in returning to the Haviland and wandered into the dry dock area on the evening of February 5, 1944, through no fault or negligence on the part of respondents, United States of America and Luckenbach Steamship Company, Inc., their agents, servants and employees.

Fourth. Libellant had no right to be in the dry dock area at the time of his accident on the evening of February 5, 1944.

Fifth. Respondent, United States of America and Luckenbach Steamship Company, Inc. owed no duty of reasonable care to libellant inasmuch as libellant did not return to the Haviland by the way he left said ship but attempted to return by a route over which said respondents could not be charged with notice that he would traverse.

Sixth. Said respondents were under no duty to protect libellant while he was within the dry dock area as they did not know nor had they any reason or duty to know or anticipate that libellant would be in said area while returning to the Haviland.

Seventh. Libellant did not become lost in Palermo by reason of any fault or negligence on the part of the master

of the Haviland and said master cannot be charged with notice that libellant might go astray while on shore leave.

[fol. 265] Eighth: There was no duty on the part of said respondents to guard libellant while on shore leave in Palermo on purposes of his own over dangers which could not be anticipated, including the danger of falling into the dry dock where libellant had no right to be or where it was reasonable to believe or anticipate that he ever would be.

Ninth: The sentry at Gate 1 is not chargeable with want of any reasonable care and was not negligent in permitting libellant and his companion from entering the dry dock area upon the display to him by libellant and his companion of shore leave passes which had been properly issued to them.

Tenth: The Navy dry dock at Palermo and the area surrounding it was in a proper state of repair and was properly and adequately lighted and illuminated on the evening of February 5, 1944 at the time of libellant's accident.

Eleventh: The dry dock itself and the area surrounding it was properly and adequately protected and guarded by a railing on the evening of February 5, 1944, at the time of said accident.

Twelfth: Libellant completely failed to sustain the burden upon him of proof by fair preponderance of the credible evidence that his accident and consequent injuries were due to fault and negligence on the part of respondents, United States of America and Luckenbach Steamship Company, Inc.

Thirteenth: Libellant's accident and consequent injuries were solely the result of his own negligence.

Fourteenth: Libellant having failed to establish any negligence on the part of respondents, United States of America and Luckenbach Steamship Company, Inc., their [fol. 266] servants, agents and employees, the second cause of action is dismissed as to them without costs.

Findings of Fact as to Third Claim

1. Libellant has been treated without expense to himself in various Government hospitals from February 5, 1944 until June 30, 1944 when he was discharged at Norfolk, Virginia, as completely disabled.

2. Libellant is totally and permanently blind by reason of the injuries sustained on February 5, 1944.

3. Libellant's condition of blindness is permanent and his convulsion attacks possibly will continue and become more frequent without any possibility of a further cure, but from time to time he will require some medical care for his attacks of headaches and epileptic convulsions.

4. Libellant has received the maximum cure that medical and surgical aid may accomplish.

5. Libellant's wages from February 5, 1944 to the end of the Haviland's voyage on March 23, 1944, at $110 per month amount to $190.67.

6. Libellant was nine days enroute from Palermo to Norfolk for which time libellant was entitled to one Hundred percent bonus, or the sum of $40.33.

7. Libellant's wages and bonus as aforesaid amount to $231. less withholding tax and Federal Old Age Benefit tax, amounting to $30.31, leaving a balance of $200.69.

8. Libellant has incurred medical expenses in the sum of $50. and has spent for medicines the sum of $216.

9. The sum of $191.25 for wages earned prior to Febru-
[fol. 267] ary 5, 1944, is being withheld.

10. Libellant's maintenance for a period of six months after leaving the hospital at Norfolk amounts to the sum of $640.

11. Libellant now relies on a seeing eye dog to aid him in moving about.

Conclusions of Law as to Third Claim

First: The duty on the part of a shipowner to furnish maintenance and cure to a seaman does not extend beyond the time when the maximum cure possible has been effected.

Second: Libellant is entitled to his wages from the date of his injury on February 5, 1944 to the end of the voyage on March 28, 1944, at $110. per month, or the sum of $190.67; to the further sum of $40.33 representing one hundred percent bonus for the nine days he was on board ship during the voyage from Palermo to Norfolk, less Withholding and Federal Old Age Benefit Taxes in the sum of $30.31; to

the further sum of $191.25 being the wages withheld; to an allowance of $266. for medical care and for medicines; and to maintenance for a period of six months after leaving the hospital at Norfolk, at $3.50 per day or $640.; making in all a total of $1,297.94 which sum he is entitled to recover from respondents.

Third: Libellant is not entitled to maintenance for his seeing eye dog, the same being neither maintenance nor cure.

Fourth: the reasonable period for maintenance during which maximum medical cure could be attained extended to December 30, 1944.

[fol. 268] Fifth: The maximum cure possible for libellant's condition having been effected, libellant is not entitled to any further allowance in the future for maintenance and cure.

Sixth: Upon the third cause of action a decree may be entered in favor of libellant against respondents United States of America and Luckenbach Steamship Company, Inc., in the sum of $1,297.94.

And a decree accordingly is hereby directed.

Dated: August 11, 1947.

John Bright, United States District Judge.

[File endorsement omitted.]

[fol. 269] In United States District Court Southern District of New York

(Same Title) Ad. 140-183

Final Decree—November 21, 1947

This cause, involving three separate causes of action, having regularly come to be heard on the 10th, 11th, and 12th days of June, 1947 upon the pleadings and proofs adduced by the respective parties hereto and having been argued and submitted by the respective advocates having been discontinued in open court as against respondent, North Atlantic & Gulf Steamship Company, Inc.; and the court after due deliberation having rendered its written opinion on the first day of July, 1947 and its findings of

facts and conclusions of law on the 11th day of August, 1947 directing that on the first cause of action, for wages, maintenance and bonuses, libellant, William Farrell, recover of and from respondent United States of America, the sum of $262.83 and that on the second cause of action, for personal injuries, the libel herein be dismissed on the merits and that on the third cause of action, for maintenance and cure, libellant, William Farrell, recover of and from respondents, United States of America and Luckenbach Steamship Company, Inc., the sum of $1,297.94.

Now, it is, by the Court,

Ordered, Adjudged and Decreed that on the first cause of action for wages, maintenance and bonuses, libellant, William Farrell, recover of and from respondent, United States of America, the sum of $262.83 which sum shall [fol. 270-279] bear interest from the date of entry of this final decree until paid and that said libellant have execution therefor, and it is further

Ordered, Adjudged and Decreed that on the second cause of action for personal injuries, the libel herein be dismissed on the merits, and it is further

Ordered, Adjudged and Decreed that on the third cause of action, for maintenance and cure, libellant, William Farrell, recover of and from respondents, United States of America and Luckenbach Steamship Company, Inc., the sum of $1,297.94 which sum shall bear interest from the date of entry of this final decree until paid and that libellant have execution therefor.

Dated: New York, N. Y., November 21st, 1947.

John Bright, U. S. D. J.

[fol. 280] In United States Circuit Court of Appeals for the Second Circuit, October Term, 1947

No. 214

(Argued April 6, 1948. Decided May 10, 1948)

Docket No. 20917

William Farrell, Libellant-Appellant,

against

United States of America and Luckenbach Steamship Company, Inc., Respondents-Appellees

Before L. Hand, Augustus N. Hand and Chase, Circuit Judges

Appeal from a final decree of the District Court for the Southern District of New York. Affirmed

G. Lester W. Curry, Proctor for Appellant.
John F. X. McGohey, United States Attorney.
Burlingham, Veeder, Clark & Hupper, Proctors for Appellees;
G. Hunter Merritt, Counsel.

[fol. 281] Opinion

Chase, Circuit Judge:

This appeal presents questions as to the duty of the master to warn a seaman in the Merchant Marine when granting him shore leave at a port partially destroyed during the war; the duty of the government to provide a safe route to and from his ship within the area under its control; and the seaman's right to wages and maintenance and cure after being accidently injured within that area while attempting to return to his ship.

The appellant is a seaman who enlisted in the Merchant Marine on November 15, 1942. He was then twenty-two years old. After a training period, he was assigned to a ship by the War Shipping Administration and made one coastwise voyage of seventeen days. He later shipped at New York on the S.S. Johns Hopkins and went to Naples, Italy. While there, on December 16, 1943, he signed on the

S. S. James E. Haviland as a seaman with the grade of an oiler.

That ship, for which respondent Luckenbach Steamship Company was general agent and which the respondent United States owned and operated, docked at Palermo, Sicily on February 4, 1944. This port was then in the control of United States naval forces. It had been severely damaged during its capture from the enemy and, though some repairs had been made, was still in a damaged condition. Dim-out or blackout regulations were required for security, the invasion of Italy then being in progress. The port area was enclosed and kept guarded by sentries at each of five entrance gates. On February 5, 1944, the appellant applied for shore leave late in the afternoon and this was granted, he being given a pass by the master, good until six o'clock that evening. The master did not warn or instruct him as to any danger. He left the ship with three companions and went out of the guarded port area by Gate 5, which except for Gate 4, was the only entrance to [fol. 282] that part of the port area where his ship was docked. He then spent some time sightseeing in Palermo during which he had some wine and then at about eight o'clock he started with another seaman to return to his ship. It was raining and they became lost in the city but were finally directed to the port area by a local policeman and arrived at Gate 1, about a mile distant from the gate by which the appellant had left and which they were trying to find. They were admitted to the port area through Gate 1 upon presentation of their passes to the sentry on duty and soon became lost while trying to make their way to their ship, being unaware of the fact that they could do that only by going back into the city and going to Gate 4 or Gate 5. While walking along a muddy street in the semi-darkness they kept upon opposite sides in order both to be safe from approaching vehicles which would be running with dimmed or no lights and in the hope that they could obtain a ride to the dock where their ship was tied. While they were there walking some forty or fifty feet apart, the appellant's companion saw him fall over a railing and disappear. His companion went to his assistance and found that he had fallen into a graving dock which the navy was using for repairing ships. This dry dock was being used twenty-four hours a day and was surrounded by a chain strung thirty-six inches above the top of the sides of the dock and held there by steel

posts. There were some lights in the area of the dock and enough lights on the floor of it to enable repair work to be done on a destroyer and a sub-chaser then in the dock. It was at least light enough for appellant's companion to be able to see him fall at a distance of forty or fifty feet.

The appellant was severely injured in the fall and as a result has become permanently blind and subject to recurring pain, especially in his head, and to epileptic attacks which may well become progressively worse as he grows [fol. 283] older. He was given treatment in the naval hospital at Palermo and at other naval hospitals abroad and in this country until his condition had, before trial, improved as much as can be expected under medical care. Henceforth nothing can be done by further treatment except to alleviate temporarily whatever discomfort his condition may cause from time to time.

The appeal is from a final decree dismissing on the merits a cause of action under the Jones Act * and the Suits in Admiralty Act ** and awarding wages plus bonus to the end of the voyage together with $266 for medical care and medicines and $3.50 per day for maintenance during a period of six months, which was the time found to have been required to make his recovery as complete as possible, after he left the naval hospital in this country where he last was hospitalized.

There is ample support in the evidence for the findings above outlined and they in turn support the conclusion that neither of the respondents was negligent. The master was certainly under no obligation to deny shore leave to the appellant because the port of Palermo had previously been bombed and the destruction had not been repaired. He was on the contrary bound to give reasonable recognition to the seaman's right to shore leave when off duty. *Aguilar* v. *Standard Oil Co. of New Jersey*, 318 U. S. 724. Nor was the master under any duty to warn the appellant that the dock area had been bombed, for that was obvious. Though much stress has been put upon the appellant's lack of experience as a seaman, there is nothing to show that he did not have the ordinary capacity of a young man of his age to realize that he was taking his leave on shore in a port partially destroyed and under limited illumination because of condi-

* 46 U. S. C. A. §688.

** 46 U. S. C. A. §745 et seq.

[fol. 284] tions resulting from the war and that he should govern himself accordingly. There is no proof that unusual danger in going to and from the ship by way of Gate 5 required special warning. And it cannot be said that the master was bound to foresee that the appellant might overstay his leave, lose his way, and reenter the port area at another gate a mile or so away from where he should have done so and unnecessarily subject himself to whatever danger was there. Thus it was not negligent to issue the pass and let the seaman take his leave without instructions.

It is argued that the respondent government was, because it was in control of the entire area, under the duty to maintain that area, which it permitted the appellant to enter while attempting to return to his ship, safe for that purpose.* But the findings sustain the conclusion that it was not negligent in that respect. These findings, which cannot be said to be clearly erroneous,** are that the dry dock did have a guard railing and that there was enough lighting in that area. While there was some conflicting testimony, several witnesses testified that the guard railing was put up immediately after a ship was docked and extended completely around the dock except at the water edge. One of these witnesses stated that the railing was up both a short time before and a short time after the accident. And the only eye-witness to the accident testified that the appellant fell over the chain. There was also much testimony to the effect that the area immediately surrounding the dry dock was kept lighted to a certain extent, despite the dim-[fol. 285] out or blackout in the city and the harbor area in general, since work was going on continually, night and day. The lighting consisted of flood lights around the edge of the dock directed towards the work going on in it, lights on some of the buildings in the dry dock area and on the ends of the booms of three cranes used in the repair work, and

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* See *Marceau* v. *Great Lakes Transit Corp.*, 2 Cir., 146 F. 2d 416, cert. denied, 324 U. S. 872; *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U. S. 36.

** As we have frequently stated, we will not disregard the findings of fact of the district court sitting in admiralty unless they are "clearly erroneous." *E.g.*, *The Paul Dana* v. *Socony Vacuum Oil Co.*, 2 Cir., 165 F. 2d 78; *Petterson Lighterage & Towage Corp.* v. *New York Central R. Co.*, 2 Cir., 126 F. 2d 992.

gangway lights on one of the vessels in the dock. Perhaps the lighting was insufficient on a dark and rainy night such as that of the accident to enable one to see everything in the area clearly, though the appellant's fall was seen from a distance of forty to fifty feet. But, it is to be remembered, this was war-time; Palermo was a base very near the actual threatre of operations. If dim-out or blackout regulations were required for the city itself, it could well have been thought necessary for the safety of all to keep lighting in the harbor area, perhaps the most likely target for bombing raids, to a minimum. Under these circumstances, we think that the government was not negligent in failing to guard more adequately, by lights or otherwise, against the possibility of a fall into the dry dock by a seaman returning to his shop docked in another part of the harbor.

To allow the appellant his wages in full to the end of the voyage only instead of for a full year was also correct. *The Osceola*, 189 U. S. 158, 175. The appellant signed on at Naples as a replacement while the original voyage was in progress. His shipping articles provided that: "It is agreed between the master and seamen • • • of the S.S. James E. Haviland • • • now bound from the Port of Philadelphia, to a point in the Atlantic Ocean to the eastward of Phila. and thence to such ports and places in any part of the world as the master may direct • • • and back to a final port of discharge in the United States, for a term of time not exceeding 12 (twelve) calendar months." The voyage was to end in the United States and did end there at the Port of New York on March 28, 1944. It seems clear that the agreement was for employ-[fol. 286] ment for the duration of the voyage only and not for twelve months, the clause, "for a term of time not exceeding 12 (twelve) calendar months," serving to limit the period for which the appellant was employed, not to extend it beyond the end of the voyage. *The Ipswich*, D. Md. 46 F. 2d 136. In *Jones* v. *Waterman S.S. Co.*, 3 Cir. 155 F. 2d 992, on which the appellant relies, the shipping articles covered one or more voyages as the master might direct within a limited term and is distinguishable on that ground. While in *Shields* v. *United States*, E. D. Pa., 73 F. Supp. 862, no notice seems to have been taken of this distinction, we think it decisive.

The allowance of bonus stands upon a different footing. The shipping articles contained a provision that "all deci-

sions, amendments and attachments of the Maritime War Emergency Board shall apply to and become a part of this agreement." A decision of this Board on February 27, 1943* provided that no bonus should be paid to a seaman while on land, making no exception in the case of one leaving his ship because of illness or injury. He was therefore correctly denied any bonus for the period while he was ashore.**

Appellant claims a right to maintenance and cure for life or "as long as the need continues." Generally speaking, however, the duty of the ship owner to provide maintenance and cure for the seaman "does not extend beyond the time when he is as completely cured as he ever can be." *Lindgren* v. *Shepard S.S. Co.*, 2 Cir., 108 F. 2d 806, 807; see *Calmar S.S. Corp.* v. *Taylor*, 303 U. S. 525, 530; *De Zon* v. *American President Lines, Ltd.*, 318 U. S. 660, 667 n.3. Appellant relies on a dictum in the *Calmar* case that as to [fol. 287] "those cases where the incapacity is caused by the employment" different "considerations" might "be thought to require a more liberal application of the rule." 303 U. S. at 530.

It is clear that, as we have held above, the appellant's injury was not caused by his employer's negligence. Perhaps, however, it was caused by his "employment," within the meaning of the *Calmar* dictum above noted. The appellant being on shore leave, in the process of returning to his ship, and on the employer's premises, the point seems arguable, it not being clear that the injuries were received as a result of intoxication or some other willful misbehavior. See *Aguilar* v. *Standard Oil Co. of New Jersey*, 318 U. S. 724; *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U. S. 36; *Marceau* v. *Great Lakes Transit Corp.*, 2 Cir., 146 F. 2d 416, cert. denied, 324 U. S. 872. But this question we need not decide. It is sufficient to say here that, even if the appellant's injuries were "caused" by his "employment," we think the general rule applicable. *Liksich* v. *Misetich*, 9 Cir., 140 F. 2d 812, cert. denied, 322 U. S. 761 (seaman's

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* Decision 2 A, Art. VI-C(1), 8 Fed. Reg. 3461, 3462. Code Fed. Reg. (Supp. 1943) 2138.

** The trial court awarded him his bonus during the time he was being repatriated and no appeal was taken from that part of the decree below.

injury received as the result of a fall sustained in the course of his employment); *cf. Lindgren* v. *Shepard S.S. Co., supra* (seaman's service assumed to have aggravated a preexisting disease). Needless to point out, we also do not pass upon the case where the seaman's injuries are caused by the employer's fault or negligence.

In the *Calmar* case, at pages 531 and 532, it was said, however, that, "The seaman's recovery must therefore be measured in each case by the reasonable cost of that maintenance and cure to which he is entitled at the time of the trial, including, in the discretion of the court, such amounts as may be needful in the immediate future for the maintenance and cure of a kind and for a period which can be definitely ascertained." In this instance, it was found correctly that, "Libellant has been treated without expense to [fol. 288] himself in various Government hospitals from February 5, 1944 until June 30, 1944 when he was discharged at Norfolk, Virginia, as completely disabled," and that, "Libellant has received the maximum cure that medical and surgical aid can accomplish." He was awarded what he had expended for medical treatment and medicines up to the date of the trial and in addition allowed maintenance to December 30, 1944 (six months after his discharge from the Norfolk hospital) as for the "reasonable period for maintenance during which maximum medical cure could be attained."

Were it not for the above quoted language in the *Calmar* case we would have no hesitancy in affirming the decree below. That language, however—in conjunction with the fact that the reversal of the decree was "without prejudice to any later suit by respondent to recover maintenance and cure to which he may then be entitled"—is conceivably susceptible to the interpretation that, though the seaman is as cured as he ever can be, he may still recover such amounts as are needed in a definitely ascertainable period in the immediate future to provide care of a clearly determinable kind. But if this interpretation were the correct one, the language would seem to be inconsistent with that on page 530 of the opinion stating in effect that the duty to provide maintenance and cure ends when the seaman is as completely cured as he ever can be. We take it, therefore, that, though Taylor, the seaman in the *Calmar* case, was afflicted with an "incurable malady," he was not at the time of the trial as cured as he could ever possibly be.

Indeed, the Court said, "Care and treatment at frequent intervals, with periodic medical observation of the patient, are of aid in arresting its [the disease's] progress." Page 526. Moreover, as the Circuit Court of Appeals stated, 92 F. 2d 84, 87, the incurable disease from which Taylor suffered was "of a progressive nature" so that it could not be [fol. 289] said that "the ordinary means which medical science affords for the treatment and care of this disease will be exhausted prior to his death." Here that is not the case. It was justifiably found that although the appellant will from time to time require some medical care to alleviate his attacks of headaches and epileptic convulsions, which may indeed become worse in the future, he has received the maximum cure that medical treatment and surgical aid may accomplish to forestall such future trouble.

Decree affirmed.

[fol. 290] In United States Circuit Court of Appeals, Second Circuit

Present: Hon. Learned Hand, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

William Farrell, Libellant-Appellant,

vs.

United States, & ano., Respondents-Appellees

Appeal from the District Court of the United States for the Southern District of New York.

Judgment—Filed May 10, 1948

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 291-298] [File endorsement omitted]

[fol. 299] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 300] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PRINTING OF RECORD—Filed December 8, 1948

It is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondents that the following portions only of the certified transcript of record now on file in the office of the Clerk of this Court shall be printed:

1. Libel: all of page 5 and through paragraph "Second" on page 6; paragraph "Seventh" on page 7; all of pages 9 through 15.

2. Answer: all of page 18; paragraph "Seventh" on page 19; all of pages 21 through 24.

3. Opinion of the District Court: all of pages 236 through 255.

4. Findings of Fact and Conclusions of Law: all of pages 256 through 268.

5. Final Decree of District Court: all of pages 269 through 270.

6. Opinion of the United States Court of Appeals for the Second Circuit: all of pages 280 through 289.

7. Decree of the Court of Appeals: all of page 290.

It is further stipulated and agreed that the remaining portions of the certified transcript of record, including the exhibits, which are not being printed may be referred to by the Court or by the parties hereto in their briefs or upon

oral argument with the same force and effect as if they had been printed.

G. Lester W. Curry, Counsel for Petitioner William Farrell. Philip B. Perlman, Solicitor General of the United States.

December 6, 1948.

[fol. 301] [File endorsement omitted.]

Endorsed on Cover: Enter Silas Blake Axtell. File No. 53269. U. S. Court of Appeals, Second Circuit, Term No. 267. William Farrell, Petitioner, vs. United States of America, War Shipping Administration, Luckenbach Steamship Company, Inc. Petition for writ of certiorari and exhibit thereto. Filed September 9, 1948. Term No. 267 O. T. 1948.